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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,478	03/15/2004	Manilal S. Dahayanake	516.0074USX1	3217

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CHARLES N.J. RUGGIERO, ESQ.
OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P.
10th FLOOR
ONE LANDMARK SQUARE
STAMFORD, CT 06901-2682

EXAMINER

METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/800,478	Applicant(s) DAHAYANAKE ET AL.	
	Examiner Daniel S. Metzmaier	Art Unit 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-99 are pending.

Drawings

1. The drawings were received on March 15, 2004. These drawings are acceptable.

Specification

2. The disclosure is objected to because of the following informalities: the cross-noting section of the specification requires updating.

The status of the application number at page 18, line 5 requires updating.

Appropriate correction is required.

Claim Objections

3. Claims 16, 82, and 83 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 16 is dependent on claim 15 and contains species that are not provided for in claim 15. Applicants should check the dependency of claim 16, which may be more appropriately dependent on claim 14.

Claims 82 and 83 limit R_2 and R_3 to methyl, which is not provided for in the limitations of claim 80, which they depend. Applicants should review the dependency of claims 82 and 83.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 31-62, 83, and 96 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 is unclear due to the insertion of "and" between components (2) and (3). It is unclear whether components (3) and (4) should be in the alternative, i.e., employing the conjunction "or". Alternatively, it is unclear if components (3) and (4) should be are to be both required, i.e., employing the conjunction "and".

Claim 48 is incomplete because it lacks a period. It is unclear what is the intended scope of the claim or whether it is intended to contain more limitations.

In claim 83, the formula lacks proper antecedent basis in the claims that it depends since it recites $\text{RCQNHCH}_2\text{CH}_2\text{CH}_2\text{-}$ rather than $\text{RCQNHCH}_2\text{CH}_2\text{CH}_2\text{-}$ (emphasis added).

Claim 96 contains an improper alternative grouping since it contains only one specie. It is unclear from what alternative surfactants said surfactant is to be selected.

Claims 32-62 are included herewith based on the indefinite issue of claim 31, which the dependent claims do not remedy.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 10-20, 25, 27, 90-93, and 95-99 are rejected under 35 U.S.C. 102(b) as being anticipated by Kersnar et al, US 4,122,043. Kersnar et al (examples 4 and 6) disclose aqueous detergent compositions. While Kersnar et al may not set forth the their aqueous detergent compositions containing amidobetaines are viscoelastic, the compositions would be expected to inherently be viscoelastic because they contain the same zwitterionic or amphoteric surfactants, organic or inorganic acids or their salts at the same concentration as those recited in the instant claims. A compound or composition and all of its properties are generally inseparable. *In re Papsech*, 315 F2d. 381, 137 USPQ 43, (CCPA 1963).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kersnar et al, US 4,122,043. Kersnar et al (examples 4 and 6) disclose aqueous detergent compositions as set forth in the above anticipation rejection. The reasons for the rejection are incorporated herein by reference.

Kersnar et al differs from claims 21-24 in the particular amidobetaines wherein R₃ and R₄ (corresponding to applicants R₂ and R₃) are both β -hydroxyethyl or methyl.

Kersnar et al (column 2, line 60, to column 3, line 35) discloses the use of amidobetaines for those exemplified. It would have been *prima facie* obvious to one of ordinary skilled in the art at the time of applicants' invention to employ the amidobetaine compounds contemplated in the Kersnar et al reference as obvious equivalents to those exemplified in the Kersnar et al reference for the advantage of availability and cost.

11. Claims 7-9, 28, 30-48, 53, 55-79, 84, and 86-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kersnar et al, US 4,122,043, as applied to claims 1-6, 10-25, 27, 90-93, and 95-99 above, and further in view of Rubin et al, 4,375,421. Kersnar et al (examples 4 and 6) disclose aqueous detergent compositions as set forth in the above anticipation and obviousness rejection. The reasons for the rejection are incorporated herein by reference.

Kersnar et al differs in the further addition of an anionic surfactant at a concentration of 1.2 % by weight or less.

Rubin et al (column 9, lines 10-20) discloses aqueous compositions containing alkyl- or alkenyl amidobetaines. Rubin et al teaches the further thickening effect by the incorporation of anionic surfactants at concentrations of 0.25 % by weight.

These references are combinable because they teach aqueous detergent compositions employing amidobetaines having rheological properties. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ anionic surfactants at a concentration of 0.25 % by weight into the compositions of examples 4 or 6 of Kersnar et al to advantageously obtain an increased thickening thereof.

12. Claims 49-52 and 80-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kersnar et al, US 4,122,043, as applied to claims 1-6, 10-25, 27, 90-93, and 95-99 above, and further in view of Rubin et al, 4,375,421.

13. Kersnar et al (examples 4 and 6) disclose aqueous detergent compositions as set forth in the above anticipation and obviousness rejection. The reasons for the rejection are incorporated herein by reference.

Kersnar et al differs in the further addition of an anionic surfactant at a concentration of 1.2 % by weight or less.

Rubin et al (column 9, lines 10-20) discloses aqueous compositions containing alkyl- or alkenyl amidobetaines. Rubin et al teaches the further thickening effect by the incorporation of anionic surfactants at concentrations of 0.25 % by weight.

These references are combinable because they teach aqueous detergent compositions employing amidobetaines having rheological properties. It would have

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been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ anionic surfactants at a concentration of 0.25 % by weight into the compositions of examples 4 or 6 of Kersnar et al to advantageously obtain n increased thickening thereof.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-13, 31-41, 63-72, and 90-99 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S.

Patent No. 6,258,859. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims substantially overlap. The instant zwitterionic surfactant concentration limitation is clearly contemplated by the '859 independent claim 1, which employs open transitional language, i.e., "comprising", and

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does not recite a secondary surfactant and would be deemed to encompass all concentrations.

16. Claims 1-6, 10-11, 14-27, and 90-99 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,482,866. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims substantially overlap. The instant zwitterionic surfactant concentration limitation is clearly contemplated by the '866 independent claim 1, which does not recite a secondary surfactant and would be deemed to encompass all concentrations. Furthermore, see the '866 examples, which are representative of the compositions defined by the '866 claims. The instant claims employ open transitional language, i.e., "comprising", and encompass patented compositions.

17. Claims 1-99 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,831,108. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims substantially overlap. The instant zwitterionic surfactant concentration limitation is clearly contemplated by the '859 independent claim 1, which employs open transitional language, i.e., "comprising", and does not recite a secondary surfactant and would be deemed to encompass all concentrations.

Conclusion


18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM